IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2241 OF 2002

1. SAMBHAJI SOPAN KOSHTI)
2. ISHWAR KRISHNA KOSHTI)
3. SHANKAR KRISHNA KOSHTI)
)
All Adults, Agriculturists,)
r/o. Hatnur, Tal. Tasgaon,)
Dist. Sangli.)...Petitioners.

V/s

1. TAHASILDAR, Tagaon)
Dist. Sangli.)
)
2. SUB DIVISIONAL OFFICER,)
Miraj Division, Miraj,)
Dist. Sangli)
)
3. SPECIAL LAND ACQUISITION)
OFFICER NO.5, Sangli)
having office at Mahasul)
Niwas, Miraj, Dist. Sangli)
)
4. DISTRICT RESETTLEMENT)
OFFICER, Sangli.)
)
5. ADDITIONAL COMMISSIONER,)
Pune Division, Pune.)
)
6. STATE OF MAHARASHTRA) ..Respondents.

Mr. R.V. More for the petitioners.

Mr. V.S. Gokhale, AGP for the respondents.

CORAM: R.M.S. KHANDEPARKAR &
V. M. KANADE, JJ.

DATE: 17th August, 2005.

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. By this petition, petitioners are challenging the acquisition proceedings which are initiated by the Special Land Acquisition Officer under the provisions of the Land Acquisition Act, 1894 read with the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986.

2. Brief facts which are relevant for the purpose of deciding this petition are as under:-

3. Petitioner Nos. 2 and 3 and the father of petitioner No.1 partitioned the ancestral lands by executing a registered partition deed on 01/02/1977. Mutation Entry No.8428 was made to give effect to the partition in the record on 30/03/1981. However, this Mutation Entry was not certified as partition was made without obtaining permission under section 86 of the Maharashtra Land Revenue Code, as a result of which all transactions in respect of the land falling under the benefitted zone were prohibited and there was further prohibition on making any entry in the revenue record effecting such transfer or change of ownership after the said date. After the provisions of the Maharashtra Project Affected Persons Rehabilitation Act, 1986 were made applicable to the land of the

petitioners, notices were issued by the Special Land Acquisition Officer under section 4(1) of the Land Acquisition Act. Petitioners promptly gave reply to the said notices and it was specifically contended in the said reply that the land which was sought to be acquired was already partitioned between the brothers by a registered partition deed dated 01/02/1977 and the area of 5 Hectares and 23 R fell to the share of petitioner No.1 and the area of 3 Hectares and 24 R fell to the share of petitioner No.2 and the area of 4 Hectares and 80 R was retained by petitioner No.3. It was contended that the Mutation Entry which was made on 30/03/1981 was not certified on account of technical reasons as provided under section 86 of the Maharashtra Land Revenue Code. It was submitted that, however, the fact that there was a partition between the brothers was established by the registered partition deed. It was contended in their reply that as a result of the said partition, the land of petitioner No.2 was not liable to be acquired.

4. The Special Land Acquisition Officer, however, did not accept the said objection raised by the petitioners and a Notification under section 6 of the Land Acquisition Act was issued and, thereafter, notices under section 9 sub-clauses (3) and (4) were

issued. Being aggrieved by the said notices, petitioners have filed this Petition under Article 226 and 227 of the Constitution of India.

5. After the Petition was filed, an ad-interim relief was granted by this Court on 31/10/2002.

6. The learned Counsel appearing on behalf of the petitioners submitted that since there was a registered partition deed which had been brought to the notice of the Special Land Acquisition Officer, it was the duty of the Special Land Acquisition Officer to take into consideration the said registered partition deed. He submitted that, however, this registered partition deed was not taken into consideration. He submitted that the land of the petitioner No.2 was not liable to be acquired.

7. Respondents have filed their affidavit-in-reply in which they have stated in para 3 that the petitioners neither in their reply to the notices under section 4 nor in the enquiry under section 5-A have submitted any evidence with regard to the alleged registered partition deed.

8. The learned Counsel appearing on behalf of the petitioners submitted that the petitioners have given the xerox copy of the registered partnership deed. Respondents have also acknowledged in their reply that this objection that there was a registered partnership deed was raised by the petitioners in the reply to the notices. In our view, since the property was partitioned prior to the issuance of notice under section 11 of the said Act, it was incumbent on the Special Land Acquisition Officer to have taken into consideration such registered partition deed which clearly establishes that the land was partitioned prior to the issuance of the said notice. In view of the said evidence, therefore, the submissions of the learned Counsel appearing on behalf of the petitioners will have to be accepted.

9. Accordingly, Notice issued by the Special Land Acquisition Officer for acquisition of the land of petitioner No.2 under section 4(1) and under section 6 and section 9 sub-clauses (3) and (4) of the said Act are hereby quashed and set aside.

10. In our view, the Special Land Acquisition Officer was under legal obligation to consider the registered partition deed. However, though this evidence was

brought to the notice of the Special Land Acquisition Officer, he has failed to take it into consideration this valuable piece of evidence. Under the circumstances Writ Petition is made absolute in the above terms with costs.

(R.M.S. KHANDEPARKAR, J.)

(V.M. KANADE, J.)